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ATTORNEYS FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

) ) ) ) ) ) ) ) )

No. 84A01-0710-CR-473

**April 17, 2008**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Ernest Atkinson appeals his sentence following the revocation of his probation. He presents a single issue for our review, namely, whether the trial court abused its discretion when it ordered him to serve the balance of his suspended sentence.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On March 1, 2004, Atkinson pleaded guilty to Child Molesting, as a Class B felony. Atkinson agreed to accept the State's sentencing recommendation, which called for ten years, with four years suspended to probation. The trial court accepted the plea agreement and imposed the recommended sentence.

On May 3, 2007, the State filed a notice of probation violation alleging that Atkinson had failed to participate in mental health counseling and had failed to report to the probation department during April 2007. At the probation revocation hearing in September 2007, Atkinson's probation officer testified that he had not seen Atkinson since March 9, 2007, and that Atkinson had not been attending group counseling, both in violation of the terms of his probation. Atkinson admitted to violating those terms. The trial court ordered that Atkinson's probation be revoked and imposed the balance of his suspended sentence, namely, four years. This appeal ensued.

## **DISCUSSION AND DECISION**

Atkinson contends that the trial court abused its discretion when it imposed execution of the four-year suspended sentence. Specifically, Atkinson maintains that the

sentence is “excessive” given his good employment history and reasonable explanations for the violations. Brief of Appellant at 7. We cannot agree.

Indiana Code Section 35-38-2-3(g) provides:

If the court finds that the person has violated a condition [of probation] at any time before termination of the period [of probation], and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person’s probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of the sentence that was suspended at the time of initial sentencing.

(Emphasis added). “[T]he standard of review used when reviewing whether a defendant’s probation revocation sentence is unreasonable is an abuse of discretion [standard].” Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005), trans. denied. Here, Atkinson admitted to violating two conditions of his probation. While Atkinson characterizes those violations as relatively minor, he has not demonstrated that the trial court abused its discretion in ordering the four-year suspended sentence executed.<sup>1</sup>

Affirmed.

SHARPNACK, J., and DARDEN, J., concur.

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<sup>1</sup> Insofar as Atkinson’s argument might be interpreted as an attempt to collaterally attack his original sentence, he is prohibited from attempting such an attack following the revocation of his probation. See Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005), trans. denied. Further, our review in this instance is not governed by Indiana Appellate Rule 7(B), as Atkinson suggests.